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6
7 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
8 DIVISION OF ALLIED HEALTH PROFESSIONS
PHYSICIAN'S ASSISTANT EXAMINING COMMITTEE
9 STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)

12 Against:)

No. D-4192

13 ALFRED DENNIS BERRY)

ACCUSATION

2234 Apple Orchard Court)

14 Rancho Cordova, California 95670)

License No. PA12211)

15)

Respondent.)

16

17 Comes now, RAY E. DALE, who charges and alleges as
18 follows:

19 1. He is the Executive Officer of the Physician's
20 Assistant Examining Committee, Division of Allied Health
21 Professions, Medical Board of California (hereinafter referred to
22 as "Committee") and makes these charges and allegations in his
23 official capacity as such.

24 2. On or about August 31, 1988, Physician's Assistant
25 Certificate No. PA12211 was issued by the Committee to Alfred
26 Dennis Berry (hereinafter referred to as "respondent").

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1 3. Under the provisions of Business and Professions
2 Code section 3527(a) the Committee may order the suspension or
3 revocation of, or the imposition of probationary conditions upon
4 a physician's assistant license after a hearing as required in
5 section 3528 for unprofessional conduct which includes, but is
6 not limited to, a violation of this chapter, a violation of the
7 State Medical Practice Act, or a violation of the regulations
8 adopted by the Committee or the Board.

9 4. Business and Professions Code section 3502 provides
10 in relevant part that:

11 "[N]otwithstanding any other provision of law, a
12 physician assistant may perform those medical services as set
13 forth by the regulations of the board when such services are
14 rendered under the supervision of a licensed physician or
15 physicians approved by the board."

16 5. Title 16, California Code of Regulations section
17 1399.521 and subsection (e) states in relevant part that:

18 "In addition to the grounds set forth in
19 Section 3527, subd. (a), of the code the committee may
20 deny, issue subject to terms and conditions, suspend,
21 revoke or place on probation a physician's assistant
22 for the following causes.

23 . . .
24 "(e) Performing medical tasks which exceed the
25 scope of practice of a physician's assistant as
26 prescribed in these regulations."

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1 6. Title 16, California Code of Regulations section
2 1399.540 states that:

3 "A physician assistant may only provide those
4 medical services which he or she is competent to
5 perform and which are consistent with the physician
6 assistant's education, training, and experience, and
7 which are delegated in writing by a supervising
8 physician who is responsible for the patients cared for
9 by that physician assistant. The committee or division
10 or their representative may require proof or
11 demonstration of competence from any physician
12 assistant for any tasks, procedures or management he or
13 she is performing. A physician assistant shall consult
14 with a physician regarding any task, procedure or
15 diagnostic problem which the physician assistant
16 determines exceeds his or her level of competence or
17 shall refer such cases to a physician."

18 7. Title 16, California Code of Regulations section
19 1399.541(h) states that a physician assistant may:

20 "Administer medication to a patient, or transmit
21 orally, or in writing on a patient's record, a
22 prescription from his or her supervising physician to a
23 person who may lawfully furnish such medication or
24 medical device. The supervising physician's
25 prescription, transmitted by the physician assistant,
26 for any patient cared for by the physician assistant,
27 shall be based either on a patient-specific order by
the supervising physician or on written protocol which
specified all criteria for the use of a specific drug
or device and any contraindications for the selection.
A physician assistant shall not provide a drug or
transmit a prescription for a drug other than that drug
specified in the protocol, without a patient-specific
order from a supervising physician. At the direction
and under the supervision of a physician supervisor, a
physician assistant may hand to a patient of the
supervising physician a properly labeled prescription
drug prepackaged by a physician, a manufacturer, as
defined in the Pharmacy Law, or a pharmacist. In any
case, the medical record of any patient cared for by
the physician assistant for whom the physician's
prescription has been transmitted or carried out shall
be reviewed and countersigned and dated by a
supervising physician within seven (7) days. A
physician assistant may not administer, provide or
transmit a prescription for controlled substances in
Schedules II through V inclusive without
patient-specific authority by a supervising physician."

1 8. Title 16, California Code of Regulations section
2 1399.545 subsections (a), (b), (d) and (e) state that:

3 "(a) A supervising physician shall be available
4 in person or by electronic communication at all times
5 when the physician assistant is caring for patients.

6 "(b) A supervising physician shall delegate to
7 a physician assistant only those tasks and procedures
8 consistent with the supervising physician's specialty
9 or usual and customary practice and with the patient's
10 health and condition.

11 "(d) The physician assistant and the supervising
12 physician shall establish in writing transport and
13 back-up procedures for the immediate care of patients
14 who are in need of emergency care beyond the physician
15 assistant's scope of practice for such times when a
16 supervising physician is not on the premises.

17 "(e) A physician assistant and his or her supervising
18 physician shall establish in writing guidelines for the
19 adequate supervision of the physician assistant which
20 shall include one or more of the following mechanisms:

21 "(1) Examination of the patient by a supervising
22 physician the same day as care is given by the
23 physician assistant;

24 "(2) Countersignature and dating of all medical
25 records written by the physician assistant within
26 thirty (30) days that the care was given by the
27 physician assistant;

28 "(3) The supervising physician may adopt protocols
29 to govern the performance of a physician assistant for
30 some or all tasks. The minimum content for a protocol
31 as referred to in this section shall include the
32 presence or absence of symptoms, signs, and other data
33 necessary to establish a diagnosis or assessment any
34 appropriate tests or studies to order, drugs to
35 recommend to the patient, and education to be given the
36 patient. For protocols governing procedures, the
37 protocol shall state the information to be given the
38 patient, the nature of the consent to be obtained from
39 the patient, the preparation and technique of the
40 procedure, and the follow-up care. Protocols shall be
41 developed by the physician or adopted from texts or
42 other sources. Protocols shall be signed and dated by
43 the supervising physician and the physician assistant.
44 The supervising physician shall review, countersign,
45 and date a minimum of 10% sample of medical records of
46 patients treated by the physician assistant functioning

1 under these protocols within thirty (30) days. The
2 physician shall select for review those cases which by
3 diagnosis, problem, treatment or procedure represent,
4 in his or her judgment, the most significant risk to
5 the patient;

6 "(4) Other mechanisms approved in advance by
7 the committee."

8 9. From on or about October 1988 to on or about May
9 1989 respondent was employed as a physician's assistant by Arthur
10 Winstead, M.D. During said period of employment respondent had
11 no written protocols, instructions, delegation, guidelines or
12 writings of any kind from Dr. Winstead and/or any supervising
13 physician. During said period of employment, respondent
14 prescribed medication without pre-authorization by Dr. Winstead
15 and/or any supervising physician.

16 10. The acts alleged in paragraph 9 constitute
17 violation of Business and Professions Code sections 3527(a),
18 3502, Title 16, California Code of Regulations sections 1399.521
19 and subsection (e) thereof, 1399.540, 1399.541(h), 1399.545(a),
20 (b), (d) and (e).

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1 WHEREFORE, complainant prays that a hearing be held and
2 respondent's license be suspended or revoked, or such other
3 action be taken as may be deemed proper.

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5 DATED: March 6, 1990

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8 RAY E. DALE
9 Executive Officer
10 Medical Board of California
11 Division of Allied Health
12 Professions
13 Physician's Assistant Examining
14 Committee
15 State of California
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17 Complainant
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